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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

*The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.*

## HAVE YOU LOST YOUR NEW YORK CHARTER?

On December 16, 1929, by publication of the proclamation of the Secretary of State 82,000 New York corporations were listed in the New York State Bulletin as dissolved in accordance with Chapter 297, Laws of 1929.

On the publication of such proclamation the corporate existence of each corporation named therein immediately ceased and the corporation is deemed dissolved without further legal proceedings.

The statute provides that by taking certain steps any corporation listed may effect annulment of its dissolution and be reinstated.

Time within which reinstatement may be effected expires June 16, 1930. This means that tax reports must be filed with the New York State Tax Commission sufficiently in advance of June 16, 1930, to allow time for the computation of taxes, penalties and interest, the rendering of statements, the payment of accounts, the issuing of certificate, the filing of certificate with the Secretary of State, and for the paying of the $50 fee. There will be no period of grace. DELAYS ARE DANGEROUS.

Any office of The Corporation Trust Company will be glad to advise whether or not any name appears on the list in question, to furnish a copy of the law, and to supply further information looking to reinstatement of a dissolved corporation.

*President.*

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

## Contents for February

# Double Taxation of Intangibles Eliminated

On January 6, 1930, the United States Supreme Court seems to have definitely established the proposition that generally the same intangible personal property shall not be subject to tax by more than one state at the same time and that no more than one state shall impose a tax in respect of the same intangible personalty at the same time. (Farmers Loan and Trust Company, Executor (Taylor will) vs. Minnesota, No. 26, October Term, 1929.) The specific issue before the court was the right of Minnesota to impose an inheritance tax in respect of Minnesota state and municipal bonds and certificates of indebtedness, registered and bearer, in the estate of a decedent dying a resident of New York, which state had exacted a death transfer tax in respect thereto. Counsel for the state argued that as the obligations were debts of the state of Minnesota and of her cities, subject to her control, her laws giving them validity, protecting them, and providing means for enforcing payment, they had situs for taxation in Minnesota. The court, in a seven to two decision reversing the Minnesota Supreme Court, after saying that on authority of Blodgett vs. Silberman, 277 U. S. 1, the obligations are choses in action and by the maxim mobilia sequuntur personam were properly taxed in New York, in terms definitely overrules, as untenable, its decision in Blackstone vs. Miller, 188 U. S. 189, supporting the doctrine "that two or more states may tax on different and more or less inconsistent principles the same testamentary transfer of such property without conflict with the Fourteenth Amendment." It is stated that it is not "permissible broadly to say that notwithstanding the 14th Amendment two States have power to tax the same personalty on different and inconsistent principles." It is recognized that choses in action may acquire a situs for taxation other than at the domicile of their owner if they have become integral parts of some local business, but, "Tangibles with permanent situs therein, and their testamentary transfer, may only be taxed by the state where they are found. And, we think, the general reasons declared sufficient to inhibit taxation of them by two states apply under present circumstances with no less force to intangibles with taxable situs imposed by an application of the legal fiction. Primitive conditions have passed; business is now transacted on a national scale. * * * Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. We have determined that in general intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles. The difference between the two things, although obvious enough, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota." Mr. Justice Stone, concurs in the result, but says that "hitherto the fact that taxation is 'double' has not been deemed to affect its constitutionality" and ques-

tions the wisdom of "laying down any constitutional principle broadly prohibiting taxation merely because it is double, at least until that characterization is more precisely defined. It seems to me to be unnecessary and undesirable to lay down any doctrine whose extent and content are so dubious." Mr. Justice Holmes thinks the tax is good and, in an opinion with which Mr. Justice Brandeis agrees, says that "there is no constitutional objection to the same transaction being taxed by two States, if the laws of both have to be invoked in order to give it effect," and "A good deal has to be read into the Fourteenth Amendment to give it any bearing upon this case. The Amendment does not condemn everything that we may think undesirable on economic or social grounds."

# Domestic Corporations

**Indiana.**

**Noncumulative preferential dividends on preferred stock defined.** As stated in the digest of the lower court decision in this case in THE JOURNAL for May, 1929, page 416, "The certificate of incorporation of the Wabash Railway Company, an Indiana corporation, provides: 'The five per cent. profit sharing preferred stock A shall be entitled to receive preferential dividends in each fiscal year up to the amount of five per cent. before dividends shall be paid upon any other stock of the corporation, but such dividends on the profit sharing preferred A stock shall be noncumulative.'" Below plaintiffs prevailed in their contention that the company may not pay dividends on its common stock and inferior preferred stock until it has paid to them unpaid preferential dividends for prior fiscal years in which it had net earnings that might have been applied to them but were not, having been plowed back as working capital. The United States Supreme Court reverses saying that in the case of stock with annual preferential but noncumulative rights each year's record must stand by itself and if for any year, in the discretion of the directors, dividends are not paid or are paid in an amount less than the full percentage from the net earnings for such year though there were such net earnings in excess of those used for the purposes of the dividend payments, the right to receive any or further dividends for that year is gone, regardless of the amount of the net earnings in any subsequent year. Wabash Railway Co. et al., vs. Barclay, U. S. Supreme Court, January 6, 1930 (not yet officially reported).

**Iowa.**

**Status of stockholders for unpaid subscription for stock in a corporation whose charter has been annulled.** Of the several questions at issue in this action we cover here that one only which is in-

dicated by the foregoing caption. The charter of the involved corporation was annulled on the ground of fraud in that, so the court found, there was no good faith intention to carry on the business for the pursuit of which incorporation was effected. A receiver was appointed; action is by him on petition for an order of assessment against stockholders on unpaid subscriptions for stock. It was urged that because of the decree of dissolution the company never was a corporation either de jure or de facto, never had stockholders, and had no power to sell or issue stock and that the purchasers of stock could not have been assessed by the so-called corporation and can not be assessed by the receiver. The Supreme Court of Iowa, affirming the lower court's decree of assessment, says, after quoting from what it said (about the corporate status of the same company) in Kosman vs. Thompson, 215 N. W. 261, 264: "At least, so far as this preliminary proceeding now on appeal is concerned, there was created a corporation in the sense that, and to the extent that, the assessment in controversy before us here cannot, upon that question, be set aside." There was a strong dissenting opinion. Havner, Atty. Gen. vs. Associated Packing Co. et al., 227 N. W. 627. M. A. Roberts, of Ottumwa, S. G. Van Auken and O. M. Brockett, both of Des Moines, and S. W. Livingston, of Washington, for appellants. Parrish, Cohen, Guthrie, Watters & Halloran, Bradshaw, Schenk & Fowler, Charles Hutchinson, and Stuart S. Ball, all of Des Moines, for appellee.

**Kentucky.**

**Suit against a corporation and its stockholders.** In an action against a Kentucky corporation for the alleged wrongful entry on his land and the mining and removal of coal therefrom plaintiff joined certain of the corporation's stockholders as defendants. Defendants moved the court to require plaintiff to elect whether he would prosecute his action against the corporation or against the stockholders as individuals. They filed a general demurrer to the petition, also. The court below sustained the motion to elect; the plaintiff declined to elect. The court then sustained the demurrer to the petition, the plaintiff declined to amend, and the petition was dismissed. The Court of Appeals of Kentucky reverses, saying that the petition stated a cause of action and so that when the plaintiff declined to elect the court should have stricken out his cause of action against the individual defendants, but without prejudice as plaintiff may desire to renew that action after his controversy with the corporation is concluded. Ashurst vs. Dixie Block Coal Co. et al., 20 S. W. (2d) 1011. Denton & Perkins and M. L. Jarvis, all of Somerset, for appellant. Virgil P. Smith, of Somerset, for appellees.

**Minnesota.**

**Right of director to two votes on board.** A man and his wife own one half of the capital stock of a corporation; they are directors. Plaintiff owns the other half having acquired his stock from one who

bought such stock from the former third director. Action is for a dissolution of the corporation on account of alleged mismanagement which was not proved; to the contrary. Also: The two directors, that is, the husband and wife, have offered, as stockholders, to elect plaintiff a director to fill the existing vacancy. "He would not serve. He wishes a salary and claims that he should be accorded two votes upon the board so as to avoid possible rule from the majority on the board. Not receiving such recognition, he prosecutes this action." Judgment below for defendants; motion for new trial denied; appeal; the Supreme Court of Minnesota affirms. The court says that it cannot sustain plaintiff's claim that "mismanagement" exists when one in plaintiff's position is not given the recognition which he demands. Hawkins vs. Foasberg et al., 227 N. W. 655. Stanley S. Gillam, of Minneapolis, for appellant. Brill & Maslon, of Minneapolis, for respondents.

**New Jersey.**

**Rights of innocent purchasers without notice of any irregularity of stock certificate allegedly lost for which a new certificate has been issued.** Here to the owner of a certificate for a certain number of shares of stock in a corporation, an officer and director thereof, on his assertion that the certificate had been lost a new certificate was issued by the corporation on authority of the other two directors for an equal number of shares. Thereafter he pledged the allegedly lost certificate as collateral security for the payment of his note; he defaulted on the note; the creditor sold the stock at public auction and bought it in; on demand the company refused transfer of the shares to the purchaser's name, on the ground that the original holder could conter no better rights thereunder than could a thief thereof: hence the suit. As it is shown that the complainant had no knowledge or notice of any facts making the transfer of the certificate to it unlawful the vice-chancellor says that it "is possessed of an unimpeachable and indefeasible right in and to said certificate and the shares of stock represented thereby" (Uniform Stock Transfer Law), and recommends a decree accordingly. The other two directors who caused the duplicate certificate to be issued without complying with the provisions of the Uniform Stock Transfer Law relative to bond, etc., eventually acquired such certificate by purchase. The certificate having been issued in direct violation of law with the knowledge of the present holders by purchase it is held that the plaintiff, now a stockholder, may have the transfer of the new certificate enjoined and its surrender for cancellation enforced, for the purpose of protecting its interest in, and for the benefit of, the defendant corporation. Edmund Wright-Ginsberg Co., Inc. vs. Carlisle Ribbon Mills, 105 N. J. Eq. 411. Bilder & Bilder, for the complainant. Griffin & Griffin, for the defendant.

**Conditions essential to appointment of receiver on application of creditor.** The New Jersey Corporation Act §65 (2 Comp. St. 1910, p. 1640) is involved. The Court of Chancery found that the corporation's business "has been and is being conducted at a great loss and

greatly prejudicial to the interests of the defendant's creditors and stockholders"; that while the defendant "has not suspended all of its business for want of funds to carry on the same, in the sense contemplated by §65 of the Corporation Act, the ordinary business, that is, its building operations have been suspended;" that while its building project has been substantially completed it has not been completed in all details as planned; that though indebtedness to the complainant (now itself in the hands of a receiver) is denied yet the proofs indicate that such indebtedness is acknowledged though not in the full amount claimed; that it is not necessary that a creditor-complainant, as a prerequisite for the filing of its bill under §65, should have its claim definitely established in amount; and, in effect, that defendant is insolvent within the purview of §65 since it manifests "a general inability to meet pecuniary obligations as they mature, by means of either available assets or an honest use of credit":—and entered an order and decree appointing a receiver, on application of the receiver for a creditor corporation and of certain of defendant's stockholders. On appeal the Court of Errors and Appeals of New Jersey affirms for the reasons stated in the Vice-Chancellor's opinion. Walser et al. vs. Northern Valley Bldg. Corporation, 147 A. 494. Wall, Haight, Carey & Hartpence, of Jersey City, for appellant. Gross & Gross, of Jersey City, for respondent Arnold J. Walser (receiver for creditor). Lichtenstein, Schwartz & Friedenberg, of Hoboken, for respondents James and W. Stanley Billington (stockholders of appellant).

**Oklahoma.**

**Corporation is estopped from denying its corporate existence in a collateral proceeding.** A number of miners, collectively, leased a coal mine and applied for a corporate charter which was issued; a stock book was printed, officers were named, and mining operations were carried on in the name adopted for the corporation. One share of stock was issued to each miner. The wages paid each miner consisted of his proportionate share (based on the number of days he worked) of the net earnings. By the terms of the lease the owner paid $2 per ton of coal delivered on the cars; amounts so paid by the owner less expense of operations made up the "net earnings." Action is to review an order of the State Industrial Commission against the corporation in a personal injury case, the injured man being one of the miners referred to above. The petitioner denies corporate existence contending that the arrangement created a partnership and that the respondent, being a member of the partnership, was not entitled to compensation. The Supreme Court of Oklahoma, affirming the order, says that while it is no doubt true that the corporation did not function or comply with all the law for the control and regulation of corporations it was nevertheless a de facto corporation, "and in a proceeding of this kind would be estopped from denying its de facto existence." Missing Link Coal Co. vs. Postawa et al., 281 P. 223. Jones & Randolph, of Muskogee, for petitioner. W. A. Barnett, of Okmulgee, Edwin Dabney, Atty. Gen., and Ralph G. Thompson, Asst. Atty. Gen., for respondents.

**Tennessee.**

**Contract for sale of stock by unlicensed agent is not void under Blue Sky Law.** One provision of the Tennessee Blue Sky Law declares the act of an agent exercising his agency (selling stock of an investment company) without registering as provided by the law to be a misdemeanor. This is an action to recover on a note given for shares of stock of a certain corporaton sold by an unregistered agent thereof, on the ground that since the selling agent had failed to register and pay the license fee the sale of the stock was illegal, the contract unenforceable, and the note void. The corporation itself had complied in all respects with the provisions of the Blue Sky Law. The Supreme Court of Tennessee affirms the decree below for the plaintiff holding the contract of sale legal. The court says that as the company could lawfully sell its stock it could lawfully delegate the power to an agent and that "the fact that the agent subjected himself to a penalty for noncompliance with a duty imposed by law could not impair a valid contract voluntarily executed by the parties. * * * To invalidate a contract for illegality, the illegality must be inherent, not merely collateral." McCallum (Trustee) vs. McIsaac, 21 S. W. (2d) 392. C. A. Noone, of Chattanooga, for appellee. Goins & Gammon, of Chattanooga, for appellant.

**Texas.**

**Rescission of stock subscription induced by unauthorized fraudulent representations by agent.** Influenced by representations made by an agent of the corporation defendant, plaintiff subscribed for shares in the corporation. Action is to rescind and to recover payments made on the ground of false and deceitful statements by the agent. The Court of Civil Appeals of Texas (Dallas), reversing the judgment below directing a verdict for defendant, and remanding, says, as to defendant's contention that though its agent may have made misrepresentations there is no right to rescind as the representations were not authorized by, but were strictly aside from, the written contract one paragraph of which specifically provides that no agent is authorized to modify the specifications of the written contract or to make any promises or offer any inducements extraneous to such contract: "We cannot accept defendant's view. The doctrine, well established in this state, is that, in actions for rescission, such as the one at bar, a principal cannot escape the consequences of a fraud perpetrated by an agent by simply inserting in the contract a provision such as we are now considering." Riedel vs. C. R. Miller Mfg. Co., 18 S. W. (2d) 264. Church, Read and Bane and R. J. Dixon, all of Dallas, for appellant. Caldwell, Gillen, Francis & Gallagher, of Dallas, for appellee.

**Receiver may recover on notes illegally taken in payment of stock subscription.** The constitution and laws of Texas provide that no corporation shall issue stock or bonds except for money paid, labor done, or property actually received. By law before a charter

may be filed by the Secretary of State the full amount of the corporation's authorized capital stock must have been subscribed in good faith and 50 per cent. thereof paid in in the manner stated above. An increase in capital must be similarly subscribed and paid for. Here there was an increase by a Texas corporation and a false certification that the full amount thereof had been subscribed and 50 per cent. thereof paid in as provided by law. In fact little more than one-third of the 50 per cent. had been paid in cash a promissory note being drawn for the balance. As stock was subsequently sold the amount of the note was correspondingly reduced to a certain amount which amount was then prorated among the directors each giving his note for the amount allocated to him. A receivership ensued; action is by the receiver on certain of these notes. It was contended that the notes were void, under the law. The United States Circuit Court of Appeals, Eighth Circuit, reverses the court below which decided that as the corporation could not have recovered on the notes the receiver had no greater claim. The Circuit Court holds that the notes are voidable only and that while as between the corporation and the drawers they no doubt would be void, third parties (innocent creditors) now have an equitable interest in them through the receiver and they must be held to be valid obligations much as though they were in the hands of bona fide holders for value, and that the receiver is entitled to recover. Joy vs. Godchaux, 35 F. (2d) 649. Charles M. Blackmar and Meservey, Michaels, Blackmar, Newkirk & Eager, all of Kansas City, Mo. Fred J. Wolfson, of Kansas City, Mo. (Swearingen, Wolfson & Lebrecht, of Kansas City, Mo., on the brief), for appellee.

# Foreign Corporations

**Idaho.**

**Unqualified foreign corporation seeking execution on judgment already recovered.** The Idaho Supreme Court says in the course of its opinion here (other comment relative to the case is not essential): "It is unnecessary to cite authority for saying that * * * the right of plaintiff corporations to do business in this state cannot be inquired into when they seek execution upon judgments already recovered." Appellants among "a veritable host of errors" set up, urged failure to plead that plaintiffs, foreign corporations, had complied with the statutory requirements as to doing business. Sparkman, Sheriff, et al. vs. Miller-Cahoon Co., et al., 282 P. 273. O. A. Johannesen, of Idaho Falls, for appellant. A. H. Wilkie, of Idaho Falls, for respondents.

**New Jersey.**

**Service on a resigned agent for process is without force.** In an action against a West Virginia corporation service of process was made on it by delivery to one who had been at one time its registered agent but who some years prior to the attempted service had forwarded to the Secretary of State its resignation as such. A rule granted on special

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appearance to show cause why the service should not be set aside is made absolute by the New Jersey Supreme Court. Louis Applebaum, plaintiff, vs. Jacob Bachrach et al., defendants. Nathaniel W. Franzblau, for plaintiff. Pitney, Hardin & Skinner, for defendants.

**Virginia.**

**Foreign express company denied right to engage in intrastate business.** The Virginia constitution provides that no foreign corporation may be authorized to carry on in the state the business, or to exercise any of the powers or functions, of a public service corporation. The appellant in error, a Delaware corporation engaged in the express business, sought authority to carry on its business in intrastate commerce in Virginia. The Corporation Commission denied the certificate. On appeal the Supreme Court of Virginia affirms the commission's order. Among other contentions the company asserted that to deny it the right to engage in intrastate business in Virginia over the lines of railroads specified would be in violation of the Fourteenth Amendment to the Federal Constitution as a denial of the equal protection of the laws. The court reiterates the proposition that (quoting from Pembina Con. Silver Mining, etc., Co. vs. Pennsylvania, 125 U. S. 189): "The states may, therefore, require for the admission within their limits of the corporations of other states, or of any number of them, such conditions as they may choose, without acting in conflict with the concluding provision of the first section of the Fourteenth Amendment." The court suggests a way out—the organization of a domestic corporation with stock ownership in the foreign company. Railway Express Agency, Inc. vs. Commonwealth, 150 S. E. 419. Wyndham R. Meredith, of Richmond, for plaintiff in error. John R. Saunders, Atty. Gen., for the Commonwealth.

**West Virginia.**

**Copy of summons served on state auditor not received by foreign corporation; default judgment set aside.** The West Virginia statutes provide for service of summons, in the case of a foreign corporation authorized to do business in the state, on the state auditor (or, if preferred, on the agent appointed for the purpose by the corporation). Here, service was accepted by the auditor. Notice was sent by him to the corporation by registered mail with request for acknowledgment of receipt. Trial was had, defendant made no appearance, and judgment was rendered for plaintiff by default. Motion to set aside the judgment was denied by the courts below. It was shown that the registered mail return receipt was not received by the auditor's office. The corporation denied receipt of the copy of the summons sent by the auditor. The Supreme Court of West Virginia reverses and sets aside the judgment saying that there is sufficient evidence of non-receipt by the corporation, that by the code a default judgment may be set aside if the defendant's non-appearance is attributable to "some adventitious circumstance beyond the control of the party," that the loss of the registered piece of mail was such an "adventitious circumstance," and that

while the statute makes the acceptance of the summons by the auditor notice to the defendant nevertheless the fact that the defendant was in reality in ignorance of the pendency of the suit is ample warrant for setting aside the default judgment. Rollins vs. North River Ins. Co., 149 S. E. 838. Morton & Snyder, of Charleston, for plaintiff in error. Robert H. C. Kay, of Charleston, for defendants in error.

# Taxation

**Nebraska.**

**Domestic corporation franchise tax held valid.** The Nebraska domestic corporation franchise tax is imposed on the basis of the total paid-up capital stock, graduated in an ascending scale. In this action in mandamus to compel the Secretary of State to accept in payment of the tax an amount computed at the statutory rates on the amount, only, of its capital stock employed in carrying on its business in the state, the plaintiff appellee contended that to measure its tax on its total paid-up capital stock of $12,000,000 of which but $690,000 is used in the state the rest being employed elsewhere, in effect imposes an unconstitutional tax on interstate commerce. The Supreme Court of Nebraska, reversing the judgment below, say that "a state may tax a domestic corporation a franchise tax as it sees fit, and prescribe any mode of measurement for the fee it finds convenient" and that the tax is not one on property or on interstate commerce, and holds against the contention. It was further urged that the state constitution providing that foreign corporations shall not be accorded greater rights or privileges than are given domestic corporations is violated since the measure of the privilege tax in the case of foreign corporations is the amount of capital stock employed in the state only (see J. I. Case Threshing Machine Co. vs.Marsh, 223 N. W. 126. THE CORPORATION JOURNAL for March, 1929 p. 379.). The court says that this provision relates to corporate franchises and privileges rather than to taxation, and that in any event there is no inequality since as foreign corporations are subject to taxation as domestic corporations in their home states the potential taxing power is equal with respect to all corporations doing business within Nebraska. Beatrice Creamery Co. vs. Marsh, as Secretary of State, 227 N. W. 926. E. A. Sorensen, Atty. Gen., and Clifford L. Rein and Irvin Stalmaster, Asst. Attys. Gen., for appellant. Allen & Requartte of Lincoln, for appellee.

**North Carolina.**

**Chain store license fee law held valid.** Under Section 162 of Chapter 345, North Carolina Laws of 1929, an individual, firm or corporation engaged in the business of operating within the state under the same general management, supervision, or ownership two or more stores whose merchandise is sold at retail (branch or chain store operators) is required to procure a license and to pay therefor an annual fee of $50 for each such store in excess of one. Actions (by agreement heard and

disposed of together) were brought by several chain store operators for refund of license fees paid under protest plaintiffs' contentions being that the license fee provision is arbitrary and unreasonable, deprives them of their property without due process of law, and denies to them the equal protection of the laws. The Superior Court, Wake County, North Carolina, in a decision recently filed holds the questioned license and fee provisions valid and denies refund. The Great Atlantic and Pacific Tea Co. vs. Maxwell, Commissioner of Revenue (not yet officially reported).

**North Dakota.**

**State income tax law held valid.** The tax here questioned is imposed on domestic and foreign corporations the basis thereof being the income "reasonably attributable to the trade or business within the state." The defendant-appellant is a foreign corporation. Various allegations of illegality were made. None was sustained, the Supreme Court of North Dakota affirming the judgment below holding the law valid on all issues joined. One, only, of these is covered here. The statute provides a formula for the allocation of business to the state. One of the factors considered is property owned,—the percentage of that within the state to the total. It was urged that there was discrimination between a corporation that owned its elevators within the state and one that operated therein with leased elevators. The court says that on the record this is a hypothetical situation since it was not proved that any corporation, engaged in a business similar to that of the plaintiff, leases instead of owning its North Dakota elevators; that business property is generally owned by the occupier, and to the extent, only, necessary for local operations; that ownership of property is a legitimate consideration since the economic necessity of ownership according to requirements normally operates uniformly and should generally afford a just and reliable criterion in apportioning income; that the formula might be improved by providing for a method of capitalizing leased property according to the rental, this being a matter for legislative consideration, however; and that "perfection in legislation is not expected, much less is it required in dealing with complex practical situations. Clearly, no arbitrary discrimination is made or intended. The statutory formula does not deny to the plaintiff the equal protection of the laws." International Elevator Company vs. Thoreson (Acker substituted), as Tax Commissioner. J. C. Adamson and S. W. Thompson, for the taxpayer. L. A. Acker, for the Commissioner.

**Ohio.**

**Fee for increasing number of authorized shares.** Section 176 of the Ohio General Code provides for a sliding scale rate fee for filing and recording articles of incorporation based on the number of authorized shares of stock and for an identic sliding scale rate fee on the same basis "for filing and recording a certificate of amendment increasing the number of shares which a corporation shall be authorized to issue." This is an action in mandamus to compel the Ohio Secretary of State

to file and record a charter amendment increasing a corporation's authorized shares from 70,000 to 100,000 on the tendered payment of $900 (i.e., 30,000 shares at 3c per share, the scale rate for the bracket covering authorized shares in excess of 50,000 to and including 100,000) which he refused, demanding $2,000 (the aggregate fee at the initial sliding scale rates for 30,000 shares, i.e., 10c per share for the first 10,000 shares plus 5c per share for all over 10,000 to 50,000 shares). The Ohio Supreme Court sustains the Secretary's demurrer, the court holding unsound relator's contention that the entire fee should not be greater than if the total number of shares had been issued in the first instance since "the language employed by the Legislature is clear and unambiguous." Defiance Spark Plug Corp. vs. Brown, Sec'y of State, 168 N. E. 842. Doyle & Lewis, of Toledo, and C. T. Lewis, Jr., of Columbus, for relator. Gilbert Bettman, Attorney General, L. F. Laylin, and William S. Evatt, both of Columbus, for respondent.

**Oklahoma.**

**State will abide by decision holding foreign corporation license fee law invalid.** In the test case of Sneed vs. Shaffer Oil & Refining Co., 35 F. (2d) 21, a digest of which decision appeared in THE JOURNAL for January, 1930, page 89, the United States Circuit Court of Appeals, Eighth Circuit, held invalid the foreign corporation annual license fee provision of the Oklahoma law by which is imposed a fee of $1 for each $1,000 of the corporation's capital invested in its business in the state, on the ground that the equal protection of the laws guaranteed by the 14th Amendment of the Constitution is denied in that the annual license fee for a domestic corporation is 50c for each $1,000 of its authorized capital stock (a different and unequal basis). It is stated by the attorney general of the state that no effort will be made to have the decision reviewed by the United States Supreme Court, that the state will abide by it, and that accordingly judgments will soon be rendered in accordance therewith in the many similar suits that were awaiting the decision in the test case, except that the state will insist on a judgment of $25 in each such action, $25 being the minimum fee provided for both domestic and foreign corporations which minimum tax provision was not at issue in the test case. In the opinion of the attorney general the minimum fee of $25 only shall be exacted hereafter from a foreign corporation under the present law.

**Tennessee.**

**New alternative domestic and foreign corporation franchise or license tax.** Chapter 12, Tennessee Laws of 1929, Extraordinary Session, approved by the Governor on December 13, 1929, provides that each domestic, and foreign corporation qualified to transact business in the state, may elect whether it will be taxed for annual franchise or license purposes, at sliding scale rates, on its authorized capital stock (which scale is the same as prescribed, without alternative election, by the law in force at the time of the enactment of the new law—minimum, $5, maximum, $150), or at ½ of 1% "of the gross amount of its re-

ceipts for the previous calendar year, arising from business done wholly within this state" (minimum tax under this alternative, $25). The election is to be made and the Secretary of State notified thereof, at the time the corporation files its annual report for franchise tax purposes (on or before July 1).

Utah.

**Annual license fee for domestic corporations on basis of total authorized capital stock held invalid.** The adjudication here is of a law repealed early in 1929. It provided for an annual license fee on domestic and foreign corporations at progressive rates based on total authorized capital stock. The law was held invalid as placing an unwarranted burden on interstate commerce and in effect imposing a tax on property outside of the state in Badger vs. Crockett, 259 P. 921, and Minneapolis Steel & Machinery Co. vs Crockett, 263 P. 926, each plaintiff being a foreign corporation. The Supreme Court of Utah now says that its decisions in those cases were in no sense controlled by this fact and that "had they been domestic corporations, the other facts remaining the same, the results could not well have been different." The language of the statute is plain and unambiguous—the basis is "authorized capital stock" in all cases, regardless of location of property or of whether or not there is a carrying on of interstate commerce. "It cannot be said that the legislature intended that the amount of the tax required to be paid should depend upon the location of the corporate property or whether the corporation was or was not engaged in interstate commerce." "It would be dangerous if the legislature could set a net large enough to catch all possible property represented by the authorized capital stock of a corporation and leave it to the courts to step inside and say what part of the authorized capital stock of a corporation could rightfully be taxed and what part should be exempt from tax." All of the plaintiff's property, consisting of undeveloped mining claims, is located in Utah and it had not been engaged in developing its claims and so was not engaged to any extent whatever in interstate commerce. Affirming the judgment below the court holds the entire statute invalid, the Chief Justice dissenting in which dissent Judge Folland concurs. The present new law imposes an annual license fee on domestic and foreign corporations at progressive rates on the basis of issued and outstanding shares of stock represented by property owned and business done in Utah. North Tintic Mining Co. vs. Crockett, Secretary of State, December 27, 1929 (not yet officially reported).

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## Delaware Corporations Organized.

509 corporations were organized under the laws of Delaware from December 20 to January 21, as against 534 for the preceding 30-day period, and 508 for the corresponding period of one year ago.

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# Some Important Matters for February and March

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALASKA—Annual Report due within 60 days from January 1.—Foreign Corporations.

ALABAMA—Annual Franchise Tax payable April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

ARIZONA—Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Franchise (Income) Tax Return and Payment one-half tax due on or before March 15.—Domestic and Foreign Corporations.

COLORADO—Annual Report due within 60 days after January 1.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

Return of Information at source due on or before March 15.—Domestic and Foreign Corporations.

DOMINION OF CANADA—Annual Income Tax Return due on or before April 30.—Domestic and Foreign Corporations.

Return of employers and return of dividends for income tax purposes due on or before March 31.—Domestic and Foreign Corporations.

GEORGIA—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between February 1 and March 1.—Domestic and Foreign Corporations.

INDIANA—Annual Capital Stock Report due on or before March 1.—Foreign Corporations engaged in manufacturing.

KANSAS—Annual Report and Franchise Tax due between January 1 and March 31.—Domestic and Foreign Corporations.

LOUISIANA—Capital Stock Statement and Tax due on or before March 1.—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MARYLAND—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Annual Report of information at the source for income tax purposes due between January 1 and March 1.—Domestic and Foreign Corporations.

Excise Tax Return due between April 1 and April 10.—Domestic and Foreign Corporations.

MISSISSIPPI—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Annual Return of Net Income due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Return of Information at Source due on or before March 1.—Domestic and Foreign Corporations.

MONTANA—Annual Report due between January 1 and March 1.—Foreign Corporations.

Annual Return of Net Income due between January 1 and March 1.—Domestic and Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corporations.

NEW YORK—Annual Franchise Tax payable on or before March 15.—Domestic and Foreign Real Estate and Holding Corporations. Transportation and Transmission Companies, other than those subject to the so-called income tax.

Annual Franchise Tax Report, Real Estate, Holding, Transportation and Transmission Corporations due between January 1 and February 15.—Domestic and Foreign Business Corporations. Form 42 C. T. Section 182 of the Tax Law.

Return of Information at Source and Return of Tax Withheld at Source due on or before April 15.—Domestic and Foreign Corporations.

NORTH CAROLINA—Income Tax Return and Return of Information due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OHIO—Annual Report due between January 1 and March 31.—Domestic and Foreign Corporations.

OREGON—Excise (Income) Tax Return due on or before March 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Report and Corporate Loan Report due on or before March 15.—Domestic and Foreign Corporations.

Bonus Report due on or before March 15.—Foreign Corporations.

RHODE ISLAND—Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due during February.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual License Tax Report due during month of February.—Domestic and Foreign Corporations.

Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due between January 1 and March 1.—Foreign Corporations.

TENNESSEE—Annual Return of Supplemental Information due between January 10 and March 15.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between first day of January and the fifteenth day of March.—Domestic and Foreign Corporations that are required to pay annual franchise tax.

UNITED STATES—Annual Return of Net Income due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

Return of Information of dividend payments due on or before February 15.—Domestic and Foreign Corporations.

VERMONT—Annual License Tax Return and payment due on or before March 1.—Domestic and Foreign Corporations.

Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

List of Stockholders due on or before April 5.—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WASHINGTON—Franchise (Income) Tax Report due not later than March 15.—Domestic and Foreign banks and financial corporations.

WEST VIRGINIA—Annual Report due in April.—Foreign Corporations.

WISCONSIN—Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

# The Corporation Trust Company's Supplementary Literature

*In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:*

**Questionnaire on Business Outside State of Organization.** This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

**Why a Transfer Agent?** The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

**Why Corporations Leave Home.** This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also may find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

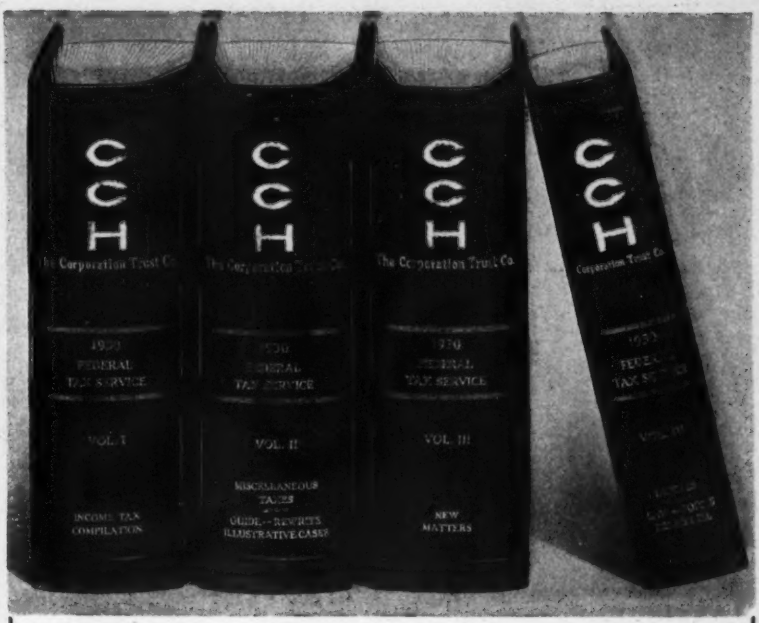
**Analysis of Delaware Amendments of 1929.** In this especially prepared pamphlet the full text of all provisions, both of the corporation law and the franchise tax law, which were changed by the amendments of 1929 is so presented as to show (1) the law as it stood before amendment; (2) matter repealed; (3) new matter. Then, immediately following each section changed, is a short, clear explanation of the reason for and effect of the change.

**What Constitutes Doing Business.** (Revised to July, 1928). A pamphlet containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

**Delaware Corporations.** Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

**Special Reports.** When cases are decided that seem to be of some particular interest or significance in connection with the matter of doing business by foreign corporations. The Corporation Trust Company sometimes issues one of these special reports. One on the Southwest Company case is now available.

**Transfer Requirements Chart.** This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.

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